

Ashley Keller (*pro hac vice*)
ack@kellerlenkner.com
Seth Meyer (*pro hac vice*)
sam@kellerlenkner.com
Tom Kayes (*pro hac vice*)
tk@kellerlenkner.com
KELLER LENKNER LLC
150 N. Riverside Plaza, Suite 4270
Chicago, Illinois 60606
Tel: (312) 741-5220

Warren Postman (*pro hac vice*)
wdp@kellerlenkner.com
KELLER LENKNER LLC
1300 I Street, N.W., Suite 400E
Washington, D.C. 20005
Tel: (202) 749-8334

Michael A. Geibelson (SBN 179970)
mgeibelson@robinskaplan.com
Aaron M. Sheanin (SBN 214472)
asheanin@robinskaplan.com
Tai S. Milder (SBN 267070)
tmilder@robinskaplan.com
ROBINS KAPLAN LLP
2440 W. El Camino Real, Suite 100
Mountain View, California 94040
Tel: (650) 784-4040
Fax: (650) 784-4041

Attorneys for Plaintiff and the Proposed Class

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

DIVA LIMOUSINE, LTD., individually and
on behalf of all others similarly situated,

Plaintiff,

v.

UBER TECHNOLOGIES, INC., et al.,

Defendants.

No. 3:18-cv-05546-EMC

**DECLARATION OF TOM KAYES IN
SUPPORT OF PLAINTIFF'S
MOTION FOR PARTIAL SUMMARY
JUDGMENT**

Date: November 15, 2018
Time: 1:30 p.m.
Location: Courtroom 5
Judge: Hon. Edward M. Chen

DECLARATION OF TOM KAYES

I, Tom Kayes, declare:

1. I have personal knowledge of these facts and would testify to them.

2. I am over 18 years of age. I am a lawyer representing Plaintiff Diva Limousine, Ltd. in this case.

3. Attached to this declaration are true and correct copies of the following documents, identified by their exhibit number, a description, and the page numbers given that exhibit:

Exh. No.	Description	Page Nos.
1.	Excerpt from Uber's website: Uber Newsroom, <i>The history of Uber</i> , available at https://www.uber.com/newsroom/history (last visited: Aug. 29, 2018)	
2.	<i>UberCab</i> Pitch Deck Prepared by Uber Co-Founders Travis Kalanick and Garrett Camp	
3.	Excerpt from Uber's website: Uber Newsroom, <i>UberCab launches in San Francisco</i> , available at https://www.uber.com/newsroom/history (last visited: Aug. 29, 2018)	
4.	Excerpt from Uber's website: Uber Newsroom, <i>First Uber Ever</i> , available at https://www.uber.com/newsroom/history (last visited: Aug. 29, 2018)	
5.	Excerpt from Uber's website: Uber Newsroom, <i>UberCab shortens its name</i> , available at https://www.uber.com/newsroom/history (last visited: Aug. 29, 2018)	
6.	Term Sheet for Settlement Between the Safety and Enforcement Division of the California Public Utilities Commission and Uber Technologies, Inc. (Case PSG-3018, Citation 5-5195), filed as dkt. 52-3 in <i>Overton et al. v. Uber Technologies, Inc., et al.</i> , No. 18-cv-02166 (N.D. Cal.)	
7.	"Uber: Everyone's Private Driver," Exhibit 3 to the 7/9/14 Deposition of Michael Colman, filed as dkt. 223-3 in <i>O'Connor v. Uber Technologies, Inc. et al.</i> , No. 13-cv-3826-EMC (N.D. Cal.)	
8.	"PARTNERS: Uber SF Onboarding Script," filed as dkt. 223-6 in <i>O'Connor v. Uber Technologies, Inc. et al.</i> , No. 13-cv-3826-EMC (N.D. Cal.)	

Exh. No.	Description	Page Nos.
9.	Excerpt from Uber's website: Eric Berdinis (Uber Product Manager), <i>Leveling the Playing Field for America's Truck Drivers</i> , Uber Newsroom (May 18, 2017), available at https://www.uber.com/newsroom/uberfreight-2/ (last visited: Aug. 29, 2018)	
10.	Excerpt from Uber's website: Natalia, 205/55/24, Uber Newsroom (August 28, 2014), available at https://www.uber.com/newsroom/2055524 (last visited: Aug. 29, 2018)	
11.	2/6/13 Email from Uber to D. O'Connor re: Uber Quality & Evaluation Changes, filed as dkt. 223-29 in <i>O'Connor v. Uber Technologies, Inc. et al.</i> , No. 13-cv-3826-EMC (N.D. Cal.)	
12.	Excerpt from Uber's website: Uber Newsroom, <i>1 Billion trips and counting...</i> , available at https://www.uber.com/newsroom/history (last visited: Aug. 29, 2018)	
13.	Excerpt from Uber's website: Uber Newsroom, <i>2 Billion trips and counting...</i> , available at https://www.uber.com/newsroom/history (last visited: Aug. 29, 2018)	
14.	Excerpt from Uber's website: Uber Newsroom, <i>5 Billion trips and counting...</i> , available at https://www.uber.com/newsroom/history (last visited: Aug. 29, 2018)	
15.	Excerpt from Uber's website: Uber Newsroom, <i>10 Billion</i> , available at www.uber.com/newsroom/10-billion (last visited: Aug. 29, 2018)	
16.	Excerpt from Uber's website: Uber Home Page, available at www.uber.com (last visited: Aug. 29, 2018)	
17.	Uber Payment Statement, filed as dkt. 223-62 in <i>O'Connor v. Uber Technologies, Inc. et al.</i> , No. 13-cv-3826-EMC (N.D. Cal.)	
18.	Excerpts of 6/11/14 & 7/9/14 Deposition of Michael Colman, filed as dkt. 223-2 & dkt. 223-12 in <i>O'Connor v. Uber Technologies, Inc. et al.</i> , No. 13-cv-3826-EMC (N.D. Cal.)	
19.	9/14/14 Email from Uber to E. Gurfinkel re: Pricing, filed as dkt. 223-38 in <i>O'Connor v. Uber Technologies, Inc. et al.</i> , No. 13-cv-3826-EMC (N.D. Cal.)	

Exh. No.	Description	Page Nos.
20.	Transportation Provider Service Agreement, filed as dkt. 223-15 in <i>O'Connor v. Uber Technologies, Inc. et al.</i> , No. 13-cv-3826-EMC (N.D. Cal.)	
21.	Driver Addendum Related to Uber Services, filed as dkt. 223-16 in <i>O'Connor v. Uber Technologies, Inc. et al.</i> , No. 13-cv-3826-EMC (N.D. Cal.)	
22.	Garrett Camp, <i>The Beginning of Uber</i> , Medium (Aug. 22, 2017), available at https://medium.com/@gc/the-beginning-of-uber-7fb17e544851 (last visited: Aug. 29, 2018)	
23.	Response of Uber Technologies, Inc. to Administrative Law Judge Robert M. Mason III's Ruling Dated September 17, 2015, filed in Rulemaking 12-12-011 on September 24, 2015, available at http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M154/K652/154652254.PDF (last accessed: Oct. 5, 2018)	
24.	Excerpt from Uber's website: Eric Meyerhofer (Head of Uber Advanced Technologies Group), <i>Uber and Toyota Team Up on Self-Driving Cars</i> , Uber Newsroom (Aug. 27, 2018), available at https://www.uber.com/newsroom/uber-toyota-team-self-driving-cars/ (last visited: Aug. 29, 2018)	
25.	Excerpt from Uber's website: Uber Newsroom, <i>Uber Freight Launches</i> , available at https://www.uber.com/newsroom/history (last visited: Aug. 29, 2018)	
26.	Excerpt from Uber's website: <i>Modern Ground Transportation for Business</i> , Uber for Business, available at https://www.uber.com/business/?mainSite=true (last visited: Aug. 29, 2018)	
27.	Excerpt from Uber's website: Uber Health, available at https://www.uberhealth.com/ (last visited: Aug. 29, 2018)	
28.	Internet Print-Out Reflecting Uber's Certificates and Permits under the California Public Utilities Commission, available at https://apps.cpuc.ca.gov/apex/f?p=203:35:0::NO:35:: (search for "Carrier ID" 38150) (last visited: Oct. 5, 2018)	
29.	Internet Print-Out Reflecting UTAC's Certificates and Permits under the California Public Utilities Commission, available at https://apps.cpuc.ca.gov/apex/f?p=203:35:0::NO:35:: (search for "Carrier ID" 37432) (last visited: Oct. 5, 2018)	

Exh. No.	Description	Page Nos.
30.	Rasier-CA LLC's Current CPUC-Issued TNC Permit, available at http://cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Licensing/Transportation_Network_Companies/Rasier%20EXP2020.pdf (last accessed: Oct. 5, 2018)	
31.	Excerpt from Uber's website: Uber, CPUC and City Requirements, available at https://www.uber.com/drive/san-diego/resources/san-diego-cpuc-requirements/ (last visited: Aug. 29, 2018)	
32.	Declaration of Michael Colman in Support of Defendant's Motion to Compel Arbitration as to Certain Absent Class Members, filed as dkt. 347 in <i>O'Connor v. Uber Technologies, Inc. et al.</i> , No. 13-cv-3826-EMC (N.D. Cal.)	
33.	Decision on Phase III.B Tracks II and IV Issues: Is Uber Technologies, Inc., a Transportation Network Company and/or a Charter Party Carrier, issued by the CPUC on May 4, 2018, Rulemaking 12-12-011, Decision 18-04-005, available at http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M213/K904/213904057.PDF (last accessed: Oct. 5, 2018)	
34.	Excerpt from Uber's website: Rachel Holt (Head of US Operations) and Aaron Schildkrout (Head of Driver Experience), <i>You asked, and we're answering</i> , Uber, available at https://pages.et.uber.com/180-days/ (last visited: Aug. 29, 2018)	
35.	Excerpt from Uber's website: Pierre-Dimitri Gore-Coty, <i>Ensuring Independent Drivers Are Not On Their Own</i> , Uber Newsroom (May 23, 2018), available at https://www.uber.com/newsroom/ensuring-independent-drivers-not-on-their-own/ (last visited: Aug. 29, 2018)	
36.	Excerpt from Uber's website: Dara Khosrowshahi (Uber CEO), <i>New App, Built For and With Drivers</i> , Uber Newsroom (April 10, 2018), available at https://www.uber.com/newsroom/new-driver-app/ (last visited: Aug. 29, 2018)	
37.	Uber Driver Guidelines, filed as dkt. 223-20 in <i>O'Connor v. Uber Technologies, Inc. et al.</i> , No. 13-cv-3826-EMC (N.D. Cal.)	
38.	Driver Application Information, filed as dkt. 223-28 in <i>O'Connor v. Uber Technologies, Inc. et al.</i> , No. 13-cv-3826-EMC (N.D. Cal.)	
39.	Industrial Welfare Commission Wage Order No. 9-2001 (Transportation Industry) available at https://www.dir.ca.gov/iwc/wageorderindustries.htm (last visited: Oct. 5, 2018)	

1 4. Today I personally visited the Apple iTunes store, the Google Play store, and Uber's
2 website and verified that one can download and install the Uber driver app and the Uber rider app
3 without paying anything.

4 5. Exhibit numbers 6, 7, 8, 11, 17, 18, 19, 20, 22, 23, 28, 29, 30, 32, 33, 37, 38, and 39
5 are also subject to the concurrently filed request for judicial notice.

6 I affirm that the foregoing is true under penalty of perjury under the laws of the United States.

7 Signed on October 5, 2018 in Chicago, Illinois.

8 /s/ Tom Kayes
9 Tom Kayes

ROBINS KAPLAN LLP
ATTORNEYS AT LAW
SILICON VALLEY

CERTIFICATE OF SERVICE

I certify that on October 5, 2018, I served this document on all ECF-registered counsel via the Court's CM/ECF system.

/s/ Tom Kayes
Tom Kayes

ROBINS KAPLAN LLP
ATTORNEYS AT LAW
SILICON VALLEY